

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|---|---|---------------------------|---|------------------------------------|---------------------------------|
| Investigator: Frank Montgoris | Team: Squad #12 | CCRB Case #: 201805721 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Thursday, 07/05/2018 8:38 AM | Location of Incident: 15th Street and 5th Avenue | Precinct: 72 | 18 Mo. SOL 1/5/2020 | EO SOL 1/5/2020 | |
| Date/Time CV Reported Thu, 07/05/2018 12:40 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Mon, 07/16/2018 1:57 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| [REDACTED] | [REDACTED] | [REDACTED] |

| Witness(es) | Home Address |
|-------------|--------------|
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |

| Subject Officer(s) | Shield | TaxID | Command |
|-----------------------|--------|--------|---------|
| 1. POM Alwyn Phillips | 06629 | 930956 | 072 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|---|-----------------------------|
| A.POM Alwyn Phillips | Force: Police Officer Alwyn Phillips struck § 87(2)(b) [REDACTED] with a vehicle. | [REDACTED] |

Case Summary

Sgt. Alexandr Ostrovsky, from the 72nd Precinct, reported this incident on July 5, 2018 on behalf of § 87(2)(b) with the IAB Command Center via telephone, generating log number 18-26116. The CCRB received this case on July 16, 2018.

On July 5, 2018, at approximately 8:38 a.m., § 87(2)(b) was riding his motorcycle and was stopped at a traffic light at the intersection of 15th Street and 5th Avenue, in Brooklyn. PO Alwyn Phillips, from the 72nd Precinct, allegedly struck § 87(2)(b) with his police vehicle (**Allegation A: Force**, § 87(2)(g)). § 87(2)(b) was arrested and charged with resisting arrest, reckless endangerment in the second degree, and obstructing governmental administration in the second degree. § 87(2)(b) reported swelling and bruising to his right knee and right foot, lower back pain, bruising to his left leg, and pain to his right shoulder. § 87(2)(b) was transported to § 87(2)(b) Hospital and was diagnosed with a contusion to his right leg.

Security footage was obtained from § 87(2)(b) who provided it to the CCRB via a nearby commercial establishment on 5th Avenue. The footage captures the onset of the incident. The footage was edited with Snag-It, and the relevant portion is embedded below.

Findings and Recommendations

Allegation A – Force: Police Officer Alwyn Phillips struck § 87(2)(b) with a vehicle.

It is undisputed that § 87(2)(b) was riding his motorcycle without the legal headgear. It is also undisputed that § 87(2)(b) was stopped and subsequently arrested.

§ 87(2)(b) alleged that he was stopped at a red light at the intersection of 15th Street and 5th Avenue, in Brooklyn, when he saw a car coming around the traffic in his peripheral vision, which was later identified by the investigation to be a police vehicle containing PO Phillips. § 87(2)(b) attempted to move a little to the right to get out of the vehicle's way, but the vehicle approached § 87(2)(b) from the left and turned to the right to obstruct § 87(2)(b)'s path. The left side of § 87(2)(b)'s motorcycle, along with § 87(2)(b)'s left knee, made contact with the front passenger's side of the police vehicle. Due to the impact, the right side of § 87(2)(b)'s motorcycle hit the front driver's side of a nearby parked car, and § 87(2)(b)'s right leg became pinned between his motorcycle and the parked vehicle. PO Phillips exited the vehicle, and § 87(2)(b) immediately told him to move because his knee was pinned against the muffler of the motorcycle. PO Phillips moved his vehicle back, and § 87(2)(b) got off his motorcycle. § 87(2)(b) denied attempting to flee the scene at any point. He did not allege any additional force, noting that PO Phillips handcuffed him without incident. § 87(2)(b) sustained swelling and bruising to his right knee and right foot from being pinned against the parked vehicle, re-aggravated a prior shoulder injury, and sustained lower back pain and a bruise to the side of his left leg. § 87(2)(b) further stated that his motorcycle had white paint on his axle. § 87(2)(b) noted that he previously had interacted with PO Phillips three or four weeks prior to this incident, in which PO Phillips claimed § 87(2)(b) tried to run him over; though § 87(2)(b) denied this claim, stating that he simply told PO Phillips, "Good morning, officer," while going around him (Board Review 01).

§ 87(2)(b) and § 87(2)(b) two witnesses identified by § 87(2)(b) and the IAB log, respectively, both denied seeing the onset of the stop, which they noted in unsworn statements. Both individuals stated that they only witnessed the interaction between § 87(2)(b) and PO Phillips after § 87(2)(b) was off his motorcycle (Board Reviews 08 and 09).

§ 87(2)(b) provided a total of 12 photos to the CCRB, which collectively show abrasions and bruising to both of § 87(2)(b)'s legs, right ankle, and left knee, as well as minor

lacerations to § 87(2)(b)'s right knee. The photos also show a dent to one of the doors of a police vehicle, as well as a white scuff mark on one of the tires. The photos also show the left tire axle of § 87(2)(b)'s motorcycle, though no paint is clearly visible on the axle. Injury photos are time-stamped from CTS as being taken on both July 6, 2018 and July 13, 2018, while photos of the police vehicle were time-stamped as being taken on July 7, 2018 (Board Review 02).

Security footage from a nearby commercial establishment, which is 13 seconds in length, shows § 87(2)(b) on his motorcycle stopped at the intersection when PO Phillips's marked vehicle approaches § 87(2)(b) on the left side. The vehicle turns to the right, towards § 87(2)(b) and both the vehicle and § 87(2)(b) travel simultaneously to the right of the frame towards a stationary black vehicle. § 87(2)(b) ultimately disappears from the frame behind the black vehicle. It is unclear whether contact is made between the police vehicle and § 87(2)(b) or his motorcycle (Board Review 03).



201805721_20180914_1005_DM.mp4

§ 87(2)(b)'s medical records from § 87(2)(b) Hospital demonstrate that he was diagnosed with a contusion to his right leg on § 87(2)(b) (See Privileged Documents).

PO Phillips testified that he observed § 87(2)(b) pass his parked vehicle while not wearing sufficient headgear, and recognized § 87(2)(b) to be the same individual who PO Phillips had attempted to stop three to four weeks prior. PO Phillips detailed that, during this prior interaction, § 87(2)(b) told him, "Good morning, officer," and accelerated his motorcycle towards PO Phillips. Upon passing PO Phillips, § 87(2)(b) stated, "Goodbye, officer." This affected PO Phillips's decision-making during this stop because he knew of § 87(2)(b)'s potential to flee the location. When § 87(2)(b) stopped at the red light at the intersection of 15th Street and 5th Avenue, PO Phillips waited until § 87(2)(b) looked away from the intersection and appeared to not pay attention. PO Phillips then drove against traffic, approached § 87(2)(b) from the left side, and turned his vehicle to the right, in front of § 87(2)(b) to block his path. PO Phillips noted that he did this to try and deter § 87(2)(b) from fleeing the stop. § 87(2)(b) seeing PO Phillips, turned the motorcycle to the right to drive past PO Phillips and through a small path between PO Phillips's vehicle and a traffic light post. PO Phillips accelerated the vehicle towards the small opening to further block § 87(2)(b) in, and § 87(2)(b) turned the motorcycle further right to drive onto the sidewalk. § 87(2)(b)'s motorcycle jumped the curb, to the point where his front tire was on the sidewalk and his back tire remained on the street, but § 87(2)(b) slammed on his breaks upon seeing multiple mailboxes blocking his path. This action caused § 87(2)(b)'s body to thrust forward off of the seat, and caused his legs to scrape against the pegs of the motorcycle resulting in scratches to § 87(2)(b)'s legs. PO Phillips denied ever striking § 87(2)(b) with the vehicle, and denied pinning § 87(2)(b) against any object throughout the incident (Board Review 04).

A search of the Fleet Services Division yielded negative results for any repairs performed to PO Phillips's assigned police vehicle from June 1, 2018 to July 8, 2018 (Board Review 10).

The mission of the New York Police Department is to protect the lives and property of their fellow citizens and impartially enforce the law. NYPD Patrol Guide, Section 200-02. An officer may use reasonable force to take a lawfully arrested person into custody, or to prevent one's escape from custody. Some factors to consider in determining when to use force are the actions taken by the subject and whether the subject is actively resisting custody. NYPD Patrol Guide, Procedure 221-01 (Board Reviews 12 and 13).

§ 87(2)(b), § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED] filed a Notice of Claim for this incident, claiming emotional damage, bodily injury, wrongful imprisonment, and property damage, and is claiming \$5,000,000 as redress. On § 87(2)(b) [REDACTED] request for 50H documents was submitted with the Comptroller's Office. That request is still pending as of the writing of this report (Board Reviews 06 and 11).

Civilian and Subject Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party (Board Review 07).
- PO Phillips has been a member of service for 16 years and has been a subject in six CCRB complaints and 15 allegations, of which five were substantiated:
 - CCRB 200603356 involved substantiated allegations of two threats of force, two discourtesies, and an abuse of authority for invoking official authority while off-duty against PO Phillips. The Board recommended charges, and the NYPD imposed a forfeiture of 20 vacation days.
 - § 87(2)(g) [REDACTED]
[REDACTED]

Squad No.: 16

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date